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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222288
Party	Defendant TBM Sand & Storage Logistics, LLC
Correspondence Address	TBM SAND & STORAGE LOGISTICS, LLC 4750 KIMBERLY FARMS DR ANDERSON, CA 96007 ramon@tbmsand.com
Submission	Answer and Counterclaim
Filer's Name	Enoch Wang
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Signature	/Enoch Wang/
Date	07/20/2015
Attachments	TBM Answer and Counterclaim.pdf(96764 bytes)

Registration Subject to the filing

Registration No	3989998	Registration date	07/05/2011
Registrant	PROP Supply & Service, LLC Suite 302 Houston, TX, TX 77042 UNITED STATES		

Goods/Services Subject to the filing

Class 001. First Use: 2008/11/15 First Use In Commerce: 2008/12/15
All goods and services in the class are requested, namely: Proppant for use in oil well and gas well hydraulic fracturing operations

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PROP SUPPLY & SERVICE, LLC
Opposer

v.

**TBM SAND & STORAGE LOGISTICS,
LLC,**
Applicant

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Opposition No. 91222288

ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM

Applicant, TBM Sand & Storage Logistics, LLC (“TBM” or “Applicant”), by its undersigned counsel, hereby submits its Answer to Notice of Opposition (“Opposition”), and disputes the allegations of Opposer Prop Supply & Service, LLC (“Prop Supply” or “Opposer”) that it will be damaged by the registration of the PropMaster mark in Application Serial No. 86118239.

In response to the numbered paragraphs in the Opposition, TBM states as follows below:

1. TBM lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 1 of the Opposition and on that basis denies the same.
2. TBM lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 2 of the Opposition and on that basis denies the same.
3. TBM lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 3 of the Opposition and on that basis denies the same.
4. TBM lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 4 of the Opposition and on that basis denies the same.

5. TBM lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 5 of the Opposition and on that basis denies the same.

6. TBM admits that Opposer obtained a registration for PropMaster under International Class 1 for proppant for use in oil well and gas well hydraulic fracturing operations, Reg. No. 3,989,998. TBM admits that Opposer obtained a registration for PropRaider under International Class 1 for proppant for use in oil well and gas well hydraulic fracturing operations, Reg. No. 3,990,058. TBM admits that Opposer obtained a registration for PropLight under International Class 1 for proppant for use in oil well and gas well hydraulic fracturing operations, Reg. No. 3,990,059. TBM admits that Opposer obtained a registration for ReaLite under International Class 1 for proppant for use in oil well and gas well hydraulic fracturing operations, Reg. No. 3,997,289. TBM denies that Opposer's obtained rights in PropMaster prior to TBM and denies that Opposer has priority. TBM is without information or knowledge sufficient to form a belief as to the truth of the other averments contained in Paragraph 6 of the Opposition, and therefore denies the same.

7. TBM is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 7 of the Opposition, and therefore denies the same.

8. TBM admits that it is a Wyoming limited liability company with an address of 4750 Kimberly Farms Drive, Anderson, California 96007.

9. TBM admits that it filed an application to register PropMaster on November 13, 2013, Application Serial No. 86118239. TBM admits that the application stated for International Class 006 as Identification, "Metal silos for the storage of proppant used in oil well and gas well hydraulic fracturing operations."

10. TBM admits that the filing date for Application Serial No. 86118239 is after the filing date for Application Serial No. 85192745, Reg. No. 3,989,998. TBM is without information or knowledge sufficient to form a belief as to the truth of the other averments contained in Paragraph 10 of the Opposition, and therefore denies the same.

11. TBM denies the allegations contained in Paragraph 11 of the Opposition. Opposer states legal conclusions to which no responsive pleading is required.

12. TBM denies the allegations contained in Paragraph 12 of the Opposition.

13. TBM denies the allegations contained in Paragraph 13 of the Opposition.

14. TBM denies the allegations contained in Paragraph 14 of the Opposition.

15. TBM admits that FultonTec's goods are imported from China. TBM is without information or knowledge sufficient to form a belief as to the truth of the other averments contained in Paragraph 15 of the Opposition, and therefore denies the same.

16. TBM denies the allegations contained in Paragraph 16 of the Opposition.

17. TBM denies the allegations contained in Paragraph 17 of the Opposition.

FIRST CLAIM FOR RELIEF

(Likelihood of Confusion under Section 2(d))

18. Paragraph 18 of the Opposition does not state a factual allegation to which a responsive pleading is required. However, TBM similarly incorporates by reference its above responses to Paragraphs 1-17 of the Opposition.

19. TBM is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 19 of the Opposition, and therefore denies the same.

20. TBM denies the allegations contained in Paragraph 20 of the Opposition.

21. TBM denies the allegations contained in Paragraph 21 of the Opposition.

SECOND CLAIM FOR RELIEF

(Dilution under Section 2(f))

22. Paragraph 22 of the Opposition does not state a factual allegation to which a responsive pleading is required. However, TBM similarly incorporates by reference its above responses to Paragraphs 1-21 of the Opposition. Opposer fails to state a claim upon which relief may be granted.

23. TBM denies the allegations contained in Paragraph 23 of the Opposition.

24. TBM denies the allegations contained in Paragraph 24 of the Opposition.

25. TBM denies the allegations contained in Paragraph 25 of the Opposition.

26. TBM denies the allegations contained in Paragraph 26 of the Opposition.

AFFIRMATIVE DEFENSES

27. Opposer's claims are barred by equitable principles, including waiver, unclean hands, and estoppel.

28. Applicant expressly reserves the right to assert and pursue additional defenses.

COUNTERCLAIM

1. Applicant hereby counterclaims seeking cancellation of Registration No. 3,989,998 issued July 5, 2011 for proppant for use in oil well and gas well hydraulic fracturing operations, on application filed December 7, 2010.

2. Applicant seeks cancellation of Registration No. 3,989,998 pursuant to 15 U.S.C. § 1052(f), because Opposer's mark lacks acquired distinctiveness.

WHEREFORE, TBM prays as follows:

(a) This Opposition be dismissed with prejudice;

(b) Registration No. 3,989,998 be cancelled;

- (c) That a notice of allowance issue with respect to Application Serial No. 86118239;
and
- (d) Applicant be granted such further and additional relief as the Trademark Trial and
Appeal Board deems proper and just.

Respectfully submitted,

WILD, CAREY & FIFE

By:

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE
OF OPPOSITION AND COUNTERCLAIM was served on counsel for Opposer the 20th day of
July 2015 by mailing the same via First-Class Mail to:

Xingsheng Wang
US-China Intellectual Property Counsel
9920 W. Sam Houston Parkway S. Suite 400
Houston, TX 77479

/s/

Enoch Wang